IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 331 OF 2005
ALONG WITH
APPEAL FROM ORDER NO. 232 OF 2005

A.O.331/05.

Bhartiya Jan Seva Sanstha & anr. ... Appellants.
Versus.
Municipal Corporation of Greater
Mumbai and others. ... Respondents.

Shri Chaurasia holding for Shri A.M.Saraogi for the Appellants.

Ms.Geeta Joglekar for the Respondent No.1.

Shri M.M.Vashi for the Respondents Nos.2 & 3.

A.O.232/05.

Suresh Makwana and anr. ... Appellants.
Versus.
Brihanmumbai Municipal
Croporation & otehrs. ... Respondents.

Shri M.M.Vashi for the Appellants.

Ms.Geeta Joglekar for the Respondent No.1.

A.M.Saraogi for the Respondents Nos.2 and 3.

CORAM : ABHAY S. OKA, J.

DATED : 6th May, 2005.

P.C.:

1. Heard the learned Counsel appearing for the respective parties. Both the Appeals can be disposed of by a common order. For the sake of convenience the parties are referred to with reference to their status in the Appeal from Order No.331 of 2005.

2. The Appellants are the Plaintiffs in a suit filed in the trial Court against the Respondents. The prayer in the suit is for declaration that the permission, if granted by the Respondent No.1 in favour of the Respondents Nos.2 and 3 to construct any toilet block on open nalla in contravention of the provisions of law is bad-in-law. There is also a prayer for injunction. A Notice of Motion was taken out for temporary injunction in the said suit. On 10th January 2005, the trial Court passed ad-interim order of status-quo in the Notice of Motion. The Appeal from order No.232 of 2005 is filed by the original Defendants Nos.2 and 3 for challenging the said order of status-quo passed by the learned trial Judge. By order dated 1st March 2005 which is impugned in the Appeal From Order No.331 of 2005 the learned trial Judge vacated the order of status-quo passed on 10th January 2005.

3. The Respondents Nos.2 and 3 were permitted by the Respondent No.1 to construct public toilet blocks for use of the public at large subject to payment of nominal charges. The MMRDA requested the Respondent No.1-Corporation to shift the said public toilet blocks. By letter dated 27th October 2004 the Assistant Commissioner, L Ward of the Respondent No.1-Corporation, informed the Chief Engineer of the MMRDA that the Respondent No.3 has been informed to shift the public toilet blocks within the width of the proposed foot path

of 2.5 meters subject to conditions laid down in the earlier work order dated 12th March 2005. Certain conditions were imposed in the said letter. One of the conditions was that the demarcation for the purpose of toilet blocks shall be given by the MMRDA in consultation with the Assistant Commissioner of the Respondent No.1. According to the Respondents Nos.2 and 3 demarcation of the new site of the toilet blocks was made by MMRDA in consultation with the Assistant Commissioner of the Respondent No.1 and therefore, they started construction of the toilet block.

4. The learned Counsel appearing for the Appellants submitted that the size of the toilet blocks at the new location has been increased. He submitted that there was no approval by the Assistant Commissioner of the Respondent No.1-Corproation. He submitted that the toilet blocks are being erected not on the foot path but on a drain.

5. The Respondent No.1 has filed an affidavit of Shri Ashok Khaire, Assistant Commissioner, L Ward. In the said affidavit he has stated that the site of the public blocks was demarcated by the MMRDA along with the staff of L Ward on 25th November 2004. The affidavit disclosed that the demarcation of the new site for public toilet block was made in consultation with the said Assistant Commissioner.

6. Photographs are filed on record. The photographs show that the construction of toilet block by the Respondents Nos.2 and 3 has made substantial progress. The photographs prima-facie show that the footpath has been constructed on the drain and the toilet blocks are constructed on the said footpath. It cannot be ignored that the toilet blocks earlier constructed by the Respondents Nos.2 and 3 have been demolished. The facility of the toilet blocks is essentially for the large number of residents of the locality and it is a public utility service. Therefore, when the learned trial Judge vacated the earlier ad-interim relief of status-quo no fault can be found with the discretionary order passed by the learned trial Judge.

7. There is no merit in the Appeal from Order No.331 of 2005 and the same is dismissed. In view of the dismissal of the Appeal from Order No.331 of 2005, Appeal from Order No.232 of 2005 does not survive and the same is also disposed of. No order as to costs.

Judge.